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A191

HISTORY

OF THE

CLAIM

OF THE

Texas Cherokees

by

William Penn Adair, 1827-1900

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1873.

УРАЯНУ ОБОУМАТЪ

We present herewith various papers, showing the claims of the Texas Cherokees and their affiliated Bands, against the State of Texas. We feel that we cannot add anything to the historical statements here made, and trust that the Legislature of Texas will recognize the justice and merit of the claim, and be willing to act promptly in rendering that relief that is properly due the Indians.

*W. P. ADAIR,
C. N. VANN,*

*Representing the Texas Cherokees
and affiliated Bands.*

HISTORY OF THE CLAIMS OF THE TEXAS CHEROKEES.

IN the year 1822, MESSRS. BOWLES, FIELDS and NICOLEK, Chiefs of the Cherokees, visited Mexico to secure a grant of land for colonization purposes. They received a promise only; subsequently DON FELIX TRESPLACIDS entered into an agreement with them, dated November 8th, 1822, and confirmed by ITURBIDE, April 27th, 1823. [See Yookum Vol., P. 216-17.]

IN 1826, JOHN DUNN HUNTER, Agent of the Cherokees, visited Mexico to receive the title to the lands, but failed; Mexico would receive the Indians as colonists, but not as citizens, neither grant them lands in common. This greatly incensed the Indians.

ON the 20th December, 1826, HUNTER and FIELDS, Cherokee delegates concluded a treaty of amity and friendship with the whites as against the Mexicans, with the understanding that they were to receive title to their lands from the whites then in revolt against Mexico.

Soon afterwards, Mexican emissaries got among the Indians and under promises of titles to their lands, induced them to turn against the Texans: and Chief BOWLES was hired to assassinate his associates, HUNTER and FIELDS. [See Yookum Vol. pp. 247-250.]

(HELD AT SAN FELIPE DE AUSTIN.)

The *Consultation* of Texas, on the 13th Nov. 1835, entered into solemn declaration with the Cherokees, to which both parties set

their names, setting forth that the Cherokee Indians and their 12 associate bands had derived their just claims from the Government of Mexico to the lands lying north of the San Antonio road and the Naches, and west of the Angelina and Sabine rivers; that the Governor and Council, immediately on its organization should appoint Commissioners to treat with said Indians and establish the definite boundary of their territory and secure their confidence and friendship; that they would guarantee to the Indians the peaceable enjoyment of their rights to their lands; that all surveys, grants and locations made within those limits, after the settlement of the Indians are, and of right ought to be utterly null and void [Yookum pp. 64-5.] Also Journal of Consultation, p. 51. These were the pledges made by the delegates of all Texas, and in pursuance of them MESSRS. HOUSTON and FORBES, on behalf of the Republic of Texas, proceeded to Bowles Village, and concluded the treaty of 23rd February, 1836. See Documents submitted by the President, on Indian affairs; November 15th, 1838, to the Texas Senate. In the year 1839 the Texas forces attacked the Cherokees in their country, and after two severe battles, in which probably two hundred Indians were killed, the Cherokees fled their country leaving all their effects. The simple cause of this assault was that the whites desired the district ceded to the Indians.

This historian thus sums the matter up: "Now the facts are, that in 1822, long before any colonist had settled in Eastern Texas or any colony contract had been made for that section, the Cherokees emigrated to Texas. They established a village north of Nacadoches, the town at that time being a waste, lately swept by the forces of Lory and Perez. On the 8th November of that year, the Cherokees by Capt. RICHARDS and others of their head men, entered into an agreement with the government of Texas, by which is stipulated that certain Cherokee Chiefs should proceed with their interpreter to Mexico to treat with ITURBIDE for the settlement of their tribe, where it was then located. In the meantime this agreement guaranteed to the Cherokees the free and peaceful right to cultivate their crops and the privileges of natives. The Chiefs proceeded to Mexico and the Imperial government having satisfied them—whether verbally or in writing it matters not—they returned. An order from the Supreme govern-

ment was dispatched to the commandant-general of the Eastern provinces and by him to the governor of Coahuila and Texas, dated August 15th, 1831, and by the latter to the political chief of Bexar dated September 1st, 1831, directing a compliance with the promises made by the supreme government to the Cherokees. The Governor states, in his communication that "for the preservation of peace, with the agricultural tribes, he had offered them their establishment on a fixed tract of land and they had selected it." He requested the political chief to put them in possession with corresponding titles. The political chief on the 25th September replied that the matter should be attended to, in accordance with the prescribed forms.

Again on the 22d of March, 1832, Col. PIEDRAS was commissioned by the political chief to put the Cherokee families into individual possession of the lands they possessed. [See report of the Committee of the Indian affair, Texas Senate, January 22d, 1840.] Whether there was any actual written title, is unknown and immaterial. In the *empressario* concession afterward made to DAVID G. BURNET and including part or all of their settlement the lands were excepted from those to be occupied by the colonists under Burnet.

For fourteen years the Cherokees had occupied this land, holding it in quiet and undisputed possession. They were not intruders on the whites, for they were there first. The Mexican authorities recognized them, as an agricultural tribe, with Mexican privileges and Col. Piedras was official agent for them in common with other tribes and no voice had been raised against their title. It was deemed by all, both *legal* and equitable. To give weight and dignity to this title, the consultation of November 1835, at a time when Texas was weak, when a heavy cloud hung over her hopes, and her liberties were suspended upon a most unequal and unjust war, made a very solemn pledge to those Indians, acknowledging their just claim to their lands, setting forth the boundaries thereof and saying further: "We solemnly declare, that we will guarantee to them the peaceable enjoyment of all their rights to their lands as we do our own; We solemnly declare, that all grants, surveys, or location of lands within the bounds hereinbefore mentioned, made after the settlement of the said Indians, are and of right, ought to be utterly null and

void;" To make it if possible still stronger, the Consultation resolved that each member sign it as "a pledge of the public faith on the part of the people of Texas." And they did sign it; the names of WHARTON, WALLER, MARTIN, HOUSTON, ZAVALA, PATRICK, HENRY, SMITH, GRIMES, J. W. ROBINSON, MITCHELL and MILLARD among others of the distinguished worthies of the Revolution were placed by themselves to that pledge. Surely they did not intend to deceive the Indians by thus purchasing their neutrality until the war was over, when they, having no further need of them, would declare that the Indians had no title either *legal* or *equitable*. The suggestion that the Consultation had no power to make such a pledge is preposterous. The members of it had power to adhere to the Constitution of 1824, or to sever from it, the Assembly was organic, primitive, revolutionary.

Twenty or thirty thousand people were defending themselves against eight millions. They met by their representatives for general consultation. They found a nation of Indians in their midst advanced in civilization and having an influence over other tribes. These Indians had occupied the country first, and it was important to conciliate them; this was done by the pledge given; it is a rule in ethics that the promiser is bound by what he believes the promisee understood by the promise. No mental reservation or technical objection can avoid this moral conclusion. From all which the result is, that President Lamar's message in this respect is unsupported by history or by the good faith of Texas toward those Indians. On the other hand it was impossible that the Indians should have an independent government within that of Texas; they must necessarily come under the laws of the latter or emigrate. It was not proposed to them that they should come under the Texan laws as citizens. The great object of many was to get their lands for they were located in a fine and desirable country. The Texans were the first violators of the pledge of 1835; the ink was scarcely dry on the paper, when locators and surveyors were seen in the forests; and this too, notwithstanding the Consultation, by the decree of November 13th, 1835, had ordered such locations and surveys to cease all over Texas. The Cherokees were *charged* with plundering and murdering the inhabitants residing in their vicinity. The Killough family were massacred, only three or four escaped, and they were

brought into the settlements by the Cherokees who by their "cunning representations," says the Secretary of War, charged these acts upon the Prairie Indians and the treacherous Mexicans.

Maj. WALTERS marched to the Neches Saline, and Col. BURLISON, came to the same point with his command. BOWLES the Chief Cherokee informed Major WALTERS he would resist the occupation of the Cherokee Country with force. Commissioners had been in conference with the Indians trying to secure their removal. The Commissioners offered to pay them for their improvements, but not for their lands; they were required to surrender their *gun locks* and remove to Arkansas. The Indians refused, and the Texans invaded their country with fire and sword, leaving nothing to tell the sad story of the civilized Cherokees, but the bleaching bones of the dead, and the smoking ruins of their homes. Texas certainly copied from the history of Alamo and Goliad and aped Mexican cruelty as near as possible.

Be it Resolved by the General Council of the Provisional Government of Texas :

THAT, SAM HOUSTON, JOHN FORBES and JOHN CAMERON be and they are hereby appointed Commissioners to treat with the Cherokee Indians and their twelve associate bands, under such instructions as may be given them by the Governor and Council, and should it so happen, that all the Commissioners cannot attend, any two of them shall have power to conclude a treaty and report the same to the General Council of the Provisional Government for its approval and ratification. (Passed December 22nd, 1835.)

Be it Resolved, etc.. by the General Council of the Provisional Government of Texas :

SEC. 1. THAT, SAM HOUSTON, JOHN FORBES and JOHN CAMERON, appointed Commissioners to treat with the aforesaid Indians be and they are hereby instructed to proceed as soon as practicable to Nacodoches and hold a treaty with the Indians aforesaid and that they shall no wise transcend the declarations made by the Consultation of November last in any of their articles of treaty.

SEC. 2. *And be it further resolved, etc.*

That they are required in all things to pursue a course of justice and equity towards the Indians and protect all honest claims of the whites, agreeably to such laws, compacts or treaties as the

said Indians may have heretofore made, with the republic of Mexico, and that the said Commissioners be instructed to provide in said treaty with the Indians that they shall never alienate their lands, either separately or collectively except to the government of Texas and to agree that the said Government will at any time hereafter purchase all their claims at a fair and reasonable valuation.

SEC. 3. *Be it further resolved, etc.*

That the Governor be required to give the Commissioners such definite and particular instructions as he may think necessary to carry into effect the foregoing resolutions, together with such additional instructions as will secure the effective co-operation of the Indians at a time when it may be necessary to call the effective force of Texas, into the field, and agreeing for their services, in a body for a specified time.

SEC. 4. *Be it further resolved, etc.*

That the Commissioners be authorized and empowered to exchange other lands within the limits of Texas, not otherwise appropriated, in place of the lands claimed by said Cherokee Indians and their associate bands. [Passed at San Felipe de Austin, December 26th, 1835. Approved December 28th, 1835.

ORDINANCES, ETC., OF TEXAS 1836.

An Act to repeal an Act entitled: "An Act to sectionize and sell the lands formerly reserved for and occupied by the Cherokee Indians," approved February 1st, 1840; also to repeal an Act entitled "An Act to provide for the survey and sale of a portion of the territory formerly occupied by the Cherokee Indians, approved July 23d, 1842.

Art. 4547, [2106] [1] The Act, entitled "An Act to sectionize and sell the lands formerly reserved for and occupied by the Cherokee Indians," approved February 1st, 1840; also an Act entitled: "An Act to provide for the survey and sale of a portion of the territory formerly occupied by the Cherokee Indians," approved July 23d, 1842, be and the same are hereby repealed.

Passed January 27th, 1844.

[Paschal's Digest of the Laws of Texas, Page 749, second edition.]

DECLARATION

OF

The Consultation in regard to Texas Cherokees.

BE IT SOLEMNLY DECREED, That we the chosen delegates, of the Consultation of all Texas, in General Convention assembled, solemnly declare, that the Cherokee Indians, and their associate bands, twelve tribes in number, agreeably to their last general Council in Texas, have derived their just claims to lands, included within the bounds hereinafter mentioned from the Government of Mexico, from whom we have also derived our rights to the soil by grant and occupancy.

We solemnly declare that the boundaries of the claims of the said Indians, to land, is as follows, to wit: lying North of the San Antonio road, and the Naches, and West of the Angelina and Sabine rivers. We solemnly declare that the Governor and general Council, immediately on its organization shall appoint Commissioners, to treat with the said Indians, to establish the definite boundary of their territory and secure their confidence and friendship.

We solemnly declare that we will guarantee to them, the peaceable enjoyment of their rights to their lands, as we do our own, We solemnly declare, that all grants, surveys and locations of lands, within the bounds hereinbefore mentioned, made after the settlement of the said Indians, are, and of right ought to be utterly null and void, and that the Commissioners issuing the same, be and are hereby ordered, immediately to recall and cancel the same, as having been made upon lands already appropriated by the Mexican Government.

We solemnly declare, that it is our sincere desire, that the Cherokee Indians, and their associate bands, should remain our friends, in peace and war, and if they do so, we pledge the public faith for the support of the foregoing declarations. We solemnly declare, that they are entitled to our commiseration and protection, as the just owners of the soil, as an unfortunate race of people that we wish to hold as friends, and treat with justice deeply and solemnly impressed with these sentiments, as a mark of sincerity, your Committee would respectfully recommend the adoption of the following resolution:

Resolved—That the members of this Convention, now present, sign this declaration, and pledge of the public faith, on the part of the people of Texas.

Done in Convention at San Felipe de Austin, this 13th day of November, A. D. 1835.

Signed, B. T. ARCHER, Pr.

John A. Wharton, Meriwether, W. Smith, Sam. Houston, William Menifee, Chas. Wilson, Wm. N. Sigler, James Hodges, Wm. W. Arrington, John Bevil, Wm. S. Fisher, Alex. Thomson, J. G. V. Pierson, D. C. Barrett, R. Jones, Jesse Burnam, Lorenzo de Zavala, A. Horton, Edwin Waller, Daniel Parker, Wm. P. Harris, John S. D. Byrom, Wm. Whitaker, A. G. Perry, Albert G. Kellogg, C. C. Dyer, Geo. M. Patrick, J. D. Clements, Claiborne West, Jas. W. Parker, J. S. Lester, Geo. W. Davis, Joseph L. Hood, A. E. C. Johnson, Asa Hoxey, Martin Parmer, Asa Mitchell, L. H. Everett, R. M. Williamson, Philip Coe, R. R. Royall, John W. Moore, Benj. Fugua, Sam. T. Allen, Wyatt Hanks, James W. Robinson, Henry Millard, Jesse Grimes, A. B. Hardin, Wyly Martin, Henry Smith, David B. Macomb, A. Houston, E. Collard.

P. B. DEXTER, Secretary.

I, JAMES PEARSON NEWCOMB, Secretary of State of the State of Texas, do hereby certify that the foregoing is a true and correct copy of the original declaration, on file in this office, (which declaration however it is believed, was never carried into effect,) and affix the seal of office, this, the 25th of November, A. D. 1870.

[Seal of the Department of the State of Texas.]

(Signed,) JAS. P. NEWCOMB, Sec'y of State.

Signed per J. E. OLDRIGHT, Acting Sec'y of State.

COPY OF TREATY

BETWEEN

TEXAS AND THE TEXAS CHEROKEES.

This treaty made and established between Sam. Houston and John Forbes, Commissioners on the part of the Provisional Government of Texas, of the one part, and the Cherokees and their associate bands now residing in Texas, of the other part, to wit: Shawnees, Delawares, Kickapoos, Quapoos, Choctaws, Boluxies, Jawanies, Alabamas, Cochaties, Caddos of the Naches, Tahovcat-takes and Unatuquous, by the Head Chiefs, Head Men and Warriors of the Cherokees, as elder Brother and Representative of all the other Bands, agreeably to their last General Council. This treaty is made conformably to a declaration made by the last Genaral Consultation, at St. Felipe, and dated 13th November, A. D. 1835.

ARTICLE FIRST.

The parties declare that there shall be a firm and lasting peace forever, and that a friendly intercourse shall be preserved, by the people belonging to both parties.

ARTICLE SECOND.

It is agreed and declared that the before named Tribes or Bands shall form one community and that they shall have and possess the lands within the following bounds, to wit: lying West of the San Antonio road and beginning on the West at the point where the said road crosses the river Angelina, and running up said river, until it reaches the mouth of the first large creek—below the Great Shawnee Village—emptying into the said

river from the Northeast, thence running with said creek to its main source, and from thence, a due north line to the Sabine River, and with said river west, then starting where the San Antonio road crosses the Angelina river and with the said road to the point where it crosses the Naches river and thence running up the East side of said river, in a northwest direction.

ARTICLE THIRD.

All lands granted or settled in good faith previous to the settlement of the Cherokees, within the before described bounds, are not conveyed by this treaty, but excepted from its operation, All persons who have once been removed, and returned, shall be considered as intruders and their settlements not be respected.

ARTICLE FOURTH.

It is agreed by the parties aforesaid, that the several Bands or Tribes, named in this treaty, shall all remove within the limits or bounds as before described.

ARTICLE FIFTH.

It is agreed and declared, by the parties aforesaid, that the land lying and being within the aforesaid limits, shall never be sold or alienated to any person or persons, power or Government whatsoever else than the Government of Texas, and the Commissioners on behalf of the Government of Texas, bind themselves, to prevent in future all persons, from intruding within the said bounds. And it is agreed on the part of the Cherokees for themselves and their younger Brothers, that no other tribes or bands of Indians whatsoever shall settle within the limits aforesaid, but those already named in this treaty and now residing in Texas.

ARTICLE SIXTH.

It is declared that no individual person, member of the Tribes before named, shall have power to sell or lease land to any person or persons, not a member or members of this Community of Indians, nor shall any citizen of Texas be allowed to lease or buy land from any Indian or Indians.

ARTICLE SEVENTH.

That the Indians shall be governed by their own regulations

and laws, within their own territory, not contrary to the laws of the Government of Texas. All property stolen from the citizens of Texas, or from the Indians shall be restored to the party from whom it was stolen, and the offender or offenders shall be punished by the party to whom he or they may belong.

ARTICLE EIGHTH.

The Government of Texas shall have power to regulate trade and intercourse, but no tax shall be laid on the trade of the Indians.

ARTICLE NINTH.

The parties to this treaty agree that one or more agencies shall be created and at least one agent shall reside specially within the Cherokee Village, whose duty it shall be to see that no injustice is done to them, or other members of the community of Indians.

ARTICLE TENTH.

The parties to this treaty agree, that so soon as Jack Steele and Samuel Bengé shall abandon their improvements without the limits of the before recited tract of country and remove within the same—that they shall be valued and paid for by the Government of Texas—the said Jack Steele and Samuel Bengé, having until the month of November, next succeeding from the date of this treaty, allowed them to remove within the limits before described. And that all the lands and improvements now occupied by any of the before named bands or tribes not lying within the limits before described, shall belong to the Government of Texas and subject to its disposal.

ARTICLE ELEVENTH.

The parties to this treaty agree, and stipulate that all the Bands or Tribes, as before recited (except Steele and Bengé) shall remove within the before described limits within eight months from the date of this treaty.

ARTICLE TWELFTH.

The parties to this treaty agree that nothing herein contained shall effect the relations of the Sabine or the Naches, nor the settlers in the neighborhood thereof, until a General Council of the several bands shall take place and the pleasure of the convention of Texas be known.

ARTICLE THIRTEENTH.

It is also declared, That all the titles issued to lands not agreeably to the declaration of the general consultation of the people of all Texas, dated the thirteenth day of November, eighteen hundred and thirty-five, within the before recited limits—are declared void—as well as all orders and surveys made in relation to the same.

Done at Colonel Bowl's Village on the twenty-third day of February, eighteen hundred and thirty-six, and the first year of the Provisional Government of Texas.

<p>Signed:</p> <p>Witness,</p> <p style="text-align: center;"><small>his</small></p> <p>FOX x FIELDS, <small>mark</small></p> <p>HENRY MILLARD,</p> <p>JOSEPH DURST,</p> <p>A. HORTON,</p> <p>GEORGE W. CASE,</p> <p>MATHIAS A. BINGHAM,</p> <p>GEORGE V. HOCKLEY,</p> <p>Secretary of Commission,</p>	<p>SAM. HOUSTON,</p> <p>JOHN FORBES, <small>his</small></p> <p>COLONEL x BOWL, <small>mark</small></p> <p style="text-align: center;"><small>his</small></p> <p>BIG x MUSH, <small>mark</small></p> <p style="text-align: center;"><small>his</small></p> <p>SAMUEL x BENGE, <small>mark</small></p> <p style="text-align: center;"><small>his</small></p> <p>OZOVTA x <small>mark</small></p> <p style="text-align: center;"><small>his</small></p> <p>CORN x TASSELL, <small>mark</small></p> <p style="text-align: center;"><small>his</small></p> <p>THE x EGG, <small>mark</small></p> <p>JOHN BOWL, <small>his</small></p> <p>TUNNETEE x <small>mark</small></p>
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DEPARTMENT OF STATE, }
AUSTIN, Texas, Dec. 7th, 1870. }

I, JAMES P. NEWCOMB, Secretary of State of the State of Texas, hereby certify that the above and foregoing is a true and correct copy of the original on file in this office, in testimony whereof, I have hereunto signed my name and caused the Seal of the Department of State to be affixed, day and date as above written.

[Seal of the Department of the State of Texas.]

Signed,

JAMES P. NEWCOMB,
Secretary of State.

Per J. E. OLDRIGHT, Acting Sec'y of State.

DISTRICT OF COLUMBIA, }
County of Washington. } to wit:

I, JOSEPH T. K. PLANT, a Commissioner of Deeds, etc., of the State of Texas for the District aforesaid do hereby certify that the above and foregoing is a true and accurate copy made by myself from the original copy signed by J. E. Oldright, as Acting Secretary of State of Texas, and that the Seal of the Department of State is thereon.

Witness my hand and official seal, this eleventh day
of February, A. D. 1871.

[Signed,]

[Seal of the State of Texas, Joseph T. K. Plant, }
Commissioner of Deeds, Washington, D. C.] }

JOSEPH T. K. PLANT,
Commissioner for the State of Texas.

OPINION AS TO THE RIGHTS OF THE TEXAS CHEROKEES.

I have carefully examined the papers respecting the claims of the Texas Cherokees.

I. History of the claims of the Texas Cherokees.

2. Declaration of the consultation of the people of Texas in regard to the Texas Cherokees, dated November 13th, 1835.

3. Copy of a treaty between the Republic of Texas, and the Texas Cherokees, dated 23d February, 1836.

My opinion is desired upon certain points, as follows:

1st. Have the Texas Cherokees or their descendants any legal or equitable rights to the lands they claim and from which they were dispossessed?

2d. What is the proper method of prosecuting such claims, if they exist?

I. In answer to this question I am of the opinion, that the Texas Cherokees and their descendants have an undoubted right in law and equity to the lands mentioned and described in the treaty, ratified February 23d, 1836, between Sam Houston and John Forbes, Commissioners on the part of the Provisional Government of Texas of the one part, and the Texas Cherokees on the other.

The basis of this claim may be stated as follows:

1st. The rights of the Cherokees to the lands, were recognized by the Mexican Government in 1822, although no written

grants may have been given by the Mexican authorities, yet they were treated as colonists with rights to lands in joint tenancy. They were put into possession by the same, and their rights were never afterwards disputed by said Mexican Government.

2d. As far as the Republic or State of Texas is concerned, the Cherokees were the original proprietors of the said lands, and are entitled to hold them in the same manner, and to the same extent as any of the aboriginal tribes in America hold their possessions. The rights of the aborigines to the lands in which they are found in possession have been sacredly upheld by the United States Government ; and indeed by all European powers who have established colonies in North America.

The lands of the Indians have never been taken, except by purchase or treaty. The Republic and State of Texas were bound by every principle of International law to carry out, with respect to the Cherokees, all the obligations, which the Mexican Government had assumed in relation to them. Texas succeeded to the Mexican Government as a nation and as a governing power, and, although it did so by force and revolution, yet it must assume all the obligations, which rested upon the Government which was overthrown. It assumed the place of the superseded Government, charged with all its burdens, debts and obligations of every kind to all other people and nations.

This doctrine is sustained by all writers on international law. This principle, and the rights of the Indians under it was fully acknowledged by the Consultation of all Texas in general convention assembled in the following language :

“Be it solemnly declared, that we, the chosen delegates of
“the Consultation of all Texas in general convention assembled
“solemnly declare, that the Cherokee Indians and their associ-
“ate bands, twelve tribes in number, have derived their just
“claims to lands included within the bounds hereinafter de-
“scribed, from the Government of Texas, from whom we have
“also derived our rights to the soil by grant and occupancy.”

4th. The Republic of Texas have acknowledged in the most solemn manner, and the formality of a treaty, the rights of these Cherokees to their lands.

The "Consultation" last named was a representative body chosen by all the people. They declared the prior right of the Indians to the lands over all other persons ; defined the boundaries of the same ; guaranteed them in the peaceable enjoyment of the lands and they solemnly pledged the public faith to the observance of the foregoing declarations.

This Consultation was then the only Government, and was a *de facto* Government with full power to make these treaty stipulations.

It cannot be said they had no authority to make these stipulations, for they were the only Government then existing in Texas, and were the immediate representatives of the people.

These declarations of the Consultation were followed by a mere formal treaty made between the Provisional Government of Texas and the Cherokee Indians.—By ordinances, passed Dec. 22d and Dec. 28th 1835, the said Provisional Government appointed Sam. Houston, John Forbes and John Cameron, Commissioners to treat with the aforesaid Indians, with power to any two of them to conclude a treaty and to provide in the same, that the Government would at any future time thereafter, purchase their claims at a fair price, and were also empowered to exchange other lands for the lands claimed by the Indians, and also to engage their co-operation in case of war.

Here the full rights of the Indians to the lands is acknowledged and the obligations of the Government to protect them.

In pursuance of the above instructions, Sam Houston and John Forbes negotiated a treaty with the said Indians and executed the same, the 23d of Feb. 1836, by Houston, Forbes and the Chiefs of the Indians.

They provided for lasting peace between the Government and the Indians, and provides that the treaty is made conformably to the declarations of the General Consultation alluded to ; provides that the Indians shall have and possess the lands within limits therein described, same as mentioned in the declaration of the Consultation.

It would seem, that the Republic of Texas was bound by every principal of law, equity and justice to sustain the rights of the

Indians to these lands. She could not repudiate all her most solemn acts and treaties with these people and still claim to have a place among the enlightened nations of the earth.

All Indian tribes have heretofore been held to be wards of the Nation, and their rights have theoretically been strictly regarded. *Cherokee Nation vs Georgia*, 6 Peters, 515.

It does not seem possible that any Republic or State can now ignore all such obligations, as have been above mentioned, and by force of arms drive out these people, and deprive them of their possessions ; or, that a powerful Sovereign State should plead technicalities against a weak tribe of Indians, and against their own plain treaties and pledges.

5th. The State of Texas is the lawful successor of the Republic of Texas, and as I before said, it assumes all its authority and all its obligations ; and among them, the pledges and treaty stipulations above set forth made with the Cherokee Indians.

It seems to me impossible that any State governed by high principles of honor and equity can resist this claim and these pledges made when they were in need, and when they desired and received the friendly co-operation of these very Cherokee Indians.

No Ex post facto laws passed by the State will now deprive the Indians of these rights ; and, indeed they are not subject in regard to rights of property to State laws.—*Kansas Indians*, 5 Wall, 737.

II. What is the proper method of prosecuting the claim for the said lands ?

I will not here discuss the question as to whether this claim can be prosecuted before the United States Courts as against the State of Texas, or as against the actual settlers on the lands, for I should not consider such a remedy, if it exists, as expedient, until all others had been tried.

I consider it more honorable, that the State of Texas should, voluntarily, through her own Legislature, make provision for the settlement of claims of the said Cherokees.

The manner in which it can and should be done is fore-shadow-

ed in the ordinance of the Provisional Government, dated Dec. 28th 1835, which appoints Commissioners to negotiate with the Indians, as follows :

“SECTION 2d. That said Commissioners are required in all things, to pursue a course of justice and equity towards the Indians, and protect all honest claims of the Whites agreeably to such laws, compacts or treaties, as the said Indians may have heretofore made with the Republic of Mexico ; and that the said Commissioners be instructed to provide in said treaty with the Indians, that they shall never alienate their lands, separately or collectively, except to the Government of Texas. and to agree that said Government will at any time hereafter purchase all their claims at a fair and reasonable valuation.”

The plan indicated in this pledge of the Republic of Texas is the most honorable and proper method of compromising and settling this claim. It is the plan, which the founders of the State themselves have suggested and offered.

The State now should, through its Legislature be asked to fulfill their own pledges and purchase at a fair valuation these lands.

The United States will not allow Indians to alienate their lands to private citizens not of their tribes. [Statutes of U. S. 1834, June 30th, Sec. 12] ; neither will it be the policy for the State of Texas to allow it ; but the State is, for that reason, the more bound to purchase the said lands, and thus become owner for the same, and bring them into her public domain, and sell the same herself to white settlers.

The question may be asked, has the State of Texas authority to negotiate with these Indians ?

The Republic of Texas had the undoubted authority to deal and negotiate with the Indians in her own territory. They did, as before quoted, pledge their faith to give the Indians a fair equivalent for their lands at any time when they should wish to sell.

These rights of the Republic and its obligations are represented by the State of Texas, who have lawfully succeeded.

In the act of admission of Texas to the Union.

Laws of the U. S. March, 1 1845, Sec. 2d, it is provided, that when said State of Texas is admitted to the Union, she "shall retain all the public funds, debts, taxes and dues of every kind, which may belong to or be due and owing said republic ; and shall also retain all the vacant and unappropriated lands lying within its limits to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct ; but in no event are said debts and liabilities to become a charge upon the Government of the United States."

It is thus clear, that the State of Texas also retain all rights pertaining to a Sovereign State, to deal with the Indian lands, and the same rights as the United States have ever exercised, which has been the right to negotiate and purchase of them.

NEW YORK Oct. 30th 1871.

(Signed,) HENRY DAY.



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